

TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Bruce Taylor (954-327-3741)

PREPARED BY: Heidi Cavicchia

SUBJECT: Ordinance First Reading

AFFECTED DISTRICT: Townwide

ITEM REQUEST: **Schedule for Council Meeting**

TITLE OF AGENDA ITEM: CODE AMENDMENT - AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE UTILITIES CODE, CHAPTER 25, BY ADDING ARTICLE IV, PROTECTION OF UNDERGROUND UTILITIES; SECTION 25-33 ENFORCEMENT OF PROTECTION OF UNDERGROUND UTILITIES; SECTION 25-34 DEFINITIONS; SECTION 25-35 MANDATORY PRE-EXCAVATION PROCEDURES; SECTION 25-36 EXEMPTIONS; SECTION 25-37 EXCAVATION IN THE ABSENCE OF UNDERGROUND FACILITIES MARKINGS BY MEMBER OPERATORS; SECTION 25-38 EXCAVATION PROCEDURES AND INSTALLATION OF FACILITIES; SECTION 25-39 NOTIFICATION UPON CONTACT; SECTION 25-40 ENFORCEMENT BY CIVIL VIOLATION PROCESS; PROVIDING FOR INCLUSION IN THE TOWN CODE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE. (tabled from June 3, 2009)

REPORT IN BRIEF: This ordinance is being written to prevent damage to our water and sewer facilities by contractors. This ordinance sets forth the requirements for contractors to expose facilities before crossing over/under the area during construction. Contractors have been required to expose the facilities, or hand dig the area, when coming within 24 inches of a pipe. This ordinance will require the contractor to expose facilities when coming within 12 inches of a pipe prior to crossing the area. In the past, contractors have used directional boring to cross through the area where our pipes are located without first exposing the line. This has resulted in boring directly through a Town owned facility as they are estimating the location of facilities and working blindly. By requiring the contract to expose the facility first, the contractor will be able to visually determine the location of the line prior to directional boring; this should greatly minimize damage to our lines, and we will be able to prevent personal injury and interruption of service.

PREVIOUS ACTIONS: At the May 6th meeting, Council tabled this item to May 20, 2009. At the May 20th meeting, Council tabled this item to June 3, 2009. At the June 3, 2009 meeting, Council tabled this item to the June 17, 2009.

CONCURRENCES: Town Attorney reviewed and approved (Control No. 1058-090408)

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

RECOMMENDATION(S): Motion to approve ordinance First Reading

Attachment(s): Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE UTILITIES CODE, CHAPTER 25, BY ADDING ARTICLE IV, PROTECTION OF UNDERGROUND UTILITIES; SECTION 25-33 ENFORCEMENT OF PROTECTION OF UNDERGROUND UTILITIES; SECTION 25-34 DEFINITIONS; SECTION 25-35 MANDATORY PRE-EXCAVATION PROCEDURES; SECTION 25-36 EXEMPTIONS; SECTION 25-37 EXCAVATION IN THE ABSENCE OF UNDERGROUND FACILITIES MARKINGS BY MEMBER OPERATORS; SECTION 25-38 EXCAVATION PROCEDURES AND INSTALLATION OF FACILITIES; SECTION 25-39 NOTIFICATION UPON CONTACT; SECTION 25-40 ENFORCEMENT BY CIVIL VIOLATION PROCESS; PROVIDING FOR INCLUSION IN THE TOWN CODE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town must provide for the protection of underground facilities thereby preventing personal injuries and interruption of vital services as per the provisions of Chapter 556, Florida Statutes; and

WHEREAS, the Town Council finds the adoption of this ordinance is in the best interests of the Town and promotes the health, safety and welfare of the citizens of Davie, and complies with applicable Florida Statutes.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. The following language is to be incorporated into the Code of Ordinances

ARTICLE IV. PROTECTION OF UNDERGROUND FACILITIES

Section 25-33. Enforcement of protection of underground utilities

The intent of this ordinance is to enforce by civil penalties the provisions of Chapter 556, Florida Statutes, protecting underground facilities and thereby preventing personal injuries and interruption of vital services. Sections 556.105, and 556.107 through 556.109 Chapter 556, Florida Statutes, in its entirety inclusive, as the same may be amended from time to time, are adopted hereby and incorporated herein by reference, and each violation of said statutes is a violation of this ordinance. Additionally, should a

court of competent jurisdiction determine that a conflict exists between any provision of this Ordinance and Chapter 556, Florida Statutes, the provisions of Chapter 556, Florida Statutes, shall control and such conflicting provision of this Ordinance shall be severed from the Ordinance pursuant to Section 3 of this Ordinance.

Section 25-34. Definitions

The following words and phrases when used in this Ordinance shall have the following meanings:

(a) *As-Builts* shall mean drawings made by an excavator after facilities have been installed, showing the location, grade, and type of the facility as installed.

(b) *Business days* shall mean Monday through Friday, excluding those holidays established by State law which are listed in Section 556.102(1), Florida Statutes.

(c) *Conflict* shall mean a situation that exists when installation of a new underground facility will result in that facility being installed within ~~twenty-four (24)~~ twelve (12) inches final clearance horizontally or vertically of another underground facility as measured from the closest point between the utilities, except as otherwise specified in Section 25-38(c).

(d) *Demolition* shall mean any operation by which a structure or mass or material is wrecked, razed, rended, moved, or removed by means of any tool, equipment, or discharge of explosives, or any disturbance of the earth in any manner on public or private lands which could damage any underground facility.

(e) *Directional Boring* shall mean any process of installing a product underground without open trench excavation and with the capacity to directionally control the bore path. The term directional boring shall be used interchangeably with the term horizontal boring technique.

(f) *Emergency* shall mean any condition constituting a clear and present danger to life or property; a situation caused by the escape of any substance transported by means of an underground facility; any interruption of vital public service or communication caused by any break or defect in an underground facility; or any condition impairing use of public streets or roads which requires immediate repair.

(g) *Excavation* shall mean any manmade cut, cavity, trench, or depression in the earth's surface, formed by removal of earth, intended to change the grade or level of land, or intended to penetrate or disturb the surface of the earth.

(h) *Excavator* shall mean any person performing excavation or demolition operations.

(i) *Exploratory Digging* shall mean a controlled excavation made to the bottom depth of a proposed excavation in order to, where the existing facility is in conflict with the proposed facility, determine and verify the actual vertical or horizontal location of existing underground facilities; exploratory digging shall be accomplished by any method of excavation that affords substantial protection to existing underground facilities; notwithstanding the foregoing, excavators may use any means for removal of pavement or masonry, but only to the depth of such pavement or masonry.

(j) *Member operator* shall mean any person who furnishes or transports materials or services by means of an underground facility and who participates in the one-call notification system established by Chapter 556, Florida Statutes.

(k) *Underground facility* shall mean any public or private personal property which is buried, placed below ground, or submerged on any member operator's right-of-way, easement, or permitted use which is being used or will be used in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communication, electric energy, oil, petroleum products, natural gas, optical signals, or other substances, and included, but is not limited to, pipelines, pipes, sewers, conduits, cables, valves, and lines. Storm drainage systems are not considered underground facilities, nor are petroleum storage systems subject to regulation pursuant to Chapter 376 Florida Statutes, unless a petroleum storage system is located on a member operator's right-of-way.

Section 25-35. Mandatory pre-excavation procedures

(a) No excavator shall apply for or receive a permit for a proposed excavation with a total length of one thousand (1,000) linear feet or more unless the excavator has first either requested copies of as-built drawings from any party whom the excavator knows may have underground facilities along the path of the proposed excavation, or if such party accepts design tickets, that the excavator submitted a design ticket to Sunshine State One-Call of Florida. No excavator who has requested as-builts or submitted a design ticket shall be denied a permit irrespective of whether such as-builts or design ticket information was in fact received by the excavator.

(b) No excavator shall engage in any excavation or demolition in a public easement or right-of-way with a length of less than one thousand (1,000) linear feet without first marking the location of such proposed excavation with white paint, white flags, or white buoys, as appropriate; such marking shall conform to the recommended guidelines for the uniform temporary markings of underground facilities as approved by the Utilities Location and Coordinating Council of the American Public Works Association, and shall occur before that person or entity provides Sunshine State One-Call of Florida with any information as required by Section 21-222(c) or Section 556, Florida Statutes.

(c) Notification before excavation. Not less than two (2) nor more than five (5) business days before beginning any excavation or demolition work, all excavators must provide the information listed at Section 556.105 (1), Florida Statutes to the State one-call notification system, "Sunshine State One-Call of Florida, Inc." The system will notify and provide the names of all member operators with underground facilities in the work area. No excavation or demolition may be undertaken until all of the named entities have either notified the excavator that no conflict exists or marked their underground facilities in the manner required by Section 556.105 Florida Statutes. If unable to respond within 48 hours, the member operator shall negotiate a new schedule with the person making the request. Re-notification is required for each 20 day period until excavation in the area is completed, or at any time when markings are not visible.

(d) Exploratory digging by excavators engaged in directional boring. Any excavator engaged in directional boring shall, where markings cross or overlap the directional bore path or where markings show a conflict exists, engage in exploratory digging. Where the

conflict is created by installation of a new facility parallel to an existing facility, the excavator shall be required to engage in exploratory digging only at those points where the existing facility deflects from the plane along which it is laid by more than twenty-two (22) degrees in any direction, as determined by reference to existing markings or reference to as-built drawings, if such as-built drawings are provided to the excavator before excavation.

(e) Markings to be made with water-based paint. Any marking made by an excavator or member operator pursuant to either this section or Section 556, Florida Statutes, shall be made using water-based paint.

Section 25-36. Exemptions

Exemptions from the mandatory pre-excavation procedures requirements in Section 25-35 are only the following:

(a) Emergencies, provided that the one-call system or the member operator was notified at the earliest opportunity and all reasonable precautions had been taken by the excavator to protect any underground facilities.

(b) Any excavation or demolition performed by the owner of single-family residential property, or for such owner by a member operator or an agent of a member operator when such excavation or demolition is made entirely on such land and only up to a depth of ten (10) inches, provided due care is used and there is no encroachment on any member operator's right-of-way, easement, or permitted use.

(c) Any excavation or demolition associated with normal agricultural or railroad activities provided such activities are not performed on any member operator's marked right-of-way, easement, or permitted use.

(d) Any excavation or demolition that occurs as the result of normal industrial activities provided such activities are confined to the immediate secured property of the facility and the activities are not performed on any operator's marked right-of-way, easement, or permitted use, and subject to any further restrictions set forth in State law.

(e) Any excavation of 18 inches or less for:

(1) Surveying public or private property by surveyors or mappers as defined in Chapter 472, Florida Statutes, excluding marked rights-of-way, marked easements, or permitted uses where marked, provided mechanized equipment is not used and the surveying is performed in accordance with the practice rules established under Section 472.027, Florida Statutes.

(2) Maintenance activities performed by a State or County agency and its employees when such activities are within the right-of-way of a public road, provided, if a member operator has permanently marked facilities on such right-of-way, no mechanized equipment may be used without first providing notification.

(f) Any excavation with hand tools by a member operator or its agent:

(1) For locating, repairing, connecting, or protecting, or routine maintenance of the member operator's underground facilities; or

(2) For the extension of a member operator's underground facilities onto the property of a person to be served by such facilities.

(3) The exemption provided in sub-paragraphs (1) and (2) is limited to excavations to a depth of 30 inches if the right-of-way has permanently marked facilities of a company other than the member operator or its agents performing the excavation.

Section 25-37. Excavation in the absence of underground facilities markings by member operators

Excavators who have complied with the requirements of Section 25-35 may proceed without first having a member operator mark underground facilities only in the following situations:

(a) If a member operator has not located and marked its underground facilities, nor notified the excavator that the area is clear, nor negotiated a new schedule for marking its facilities, within 48 hours, excluding days other than business days, after the excavator's notification to the State one-call notification system; then the excavator may proceed with excavation (but not with demolition), provided the excavator does so with reasonable care, using detection equipment, exploratory digging, or other acceptable means to locate underground facilities. Except as provided below, no demolition shall proceed until all underground facilities have been marked and either safeguarded or removed.

(b) If a member operator certifies that it does not have accurate information concerning the exact location of its underground facilities and provides the best information available, an excavator may proceed, provided that the excavation or demolition is performed with reasonable care and detection equipment, exploratory digging, or other acceptable means to locate underground facilities.

Section 25-38. Excavation procedures and installation of facilities

(a) Excavators are prohibited from removing or destroying any markings used by a member operator to mark the horizontal route of an underground facility. If markings are no longer visible, the excavator shall stop activities in that vicinity and notify the State one-call notification system to have the route remarked.

(b) No excavator may excavate or engage in demolition where such excavation or demolition is substantially certain to result in damage to any underground facility; this section shall not preclude an excavator from engaging in exploratory digging. If an excavation or demolition causes damage to any existing underground facility, the excavator must cease excavation or demolition at that depth and immediately notify the affected utility.

(c) No new underground facility shall be installed in such a way that creates a conflict with an existing underground facility unless the excavator submits a permit drawing showing the existence of the conflict and this permit drawing is approved by the permitting agency, or, when the excavator discovers a conflict the existence of which the excavator was unaware of when the excavator applied for a permit, that excavator ceases excavation, immediately notified the owner of the existing facility, and:

(1) Takes such measures as are reasonable in the determination of the owner of the existing facility to prevent interference with the operation or maintenance of the existing facility, where the existing facility is a water or sewer facility owned, operated, or maintained by the County or a municipality; or

(2) Consults with the owner of the existing facility to determine whether measures to prevent interference with the operation, or maintenance of the existing facility are reasonably necessary, if the existing facility is not a water or sewer facility owned, operated, or maintained by the County or a municipality; in the event that the excavator and the owner of the existing facility are not able to determine whether such measures are reasonably necessary, the permitting agency shall determine what measures are reasonably necessary to allow installation of the new facility.

If the owner of the existing facility does not respond to notification provided by an excavator under this section within twenty-four (24) hours of such notification, the excavator shall be allowed to continue installation. All conflicts of which the excavator is aware of when applying for a permit shall be disclosed on the permit drawings; for the purposes of this subpart (c), a conflict ~~which does not involve a water and sewer facility~~ shall refer to less than a minimum of twelve (12) ~~and not twenty-four (24)~~ inches. Nothing in this section shall empower any agency or person to approve any installation in violation of any state or federal statute, rule or code.

(d) An excavator shall not engage in directional boring unless the equipment used for such directional boring allows the excavator to monitor the location of the excavator's bore-head, or equivalent equipment.

Section 25-39. Notification upon contact

If any contact with or damage to any underground facility occurs, the excavator causing the contact or damage shall immediately notify the member operator and shall cease all activities that may cause further damage until such time as the contact or damage has been repaired.

Section 25-40. Enforcement by civil violation process

Code inspectors are empowered to issue civil violation notices pursuant to Chapter 6 of this Code for any violation of this Ordinance, including the incorporated provisions of Chapter 556, Florida Statutes, and to order any excavator to stop work or to not start until there has been compliance with the notification, marking, and repair provisions of this Ordinance. This authority exists in addition to that given law enforcement officers pursuant to Section 556.107, Florida Statutes.

Sections 25-41 through 25-70. Reserved

SECTION 2. All ordinances or parts of ordinances in conflict herein are hereby repealed to the extent of such conflict.

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, then such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4. This Ordinance shall take effect immediately upon its passage and adoption.

PASSED ON FIRST READING THIS _____ DAY OF _____, 2009.

PASSED ON SECOND READING THIS _ DAY OF _____, 2009.

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2009.